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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,183	02/08/2001	Eric Ellington	OAA-145-A	6456

21828 7590 11/14/2002

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EXAMINER

FISCHMANN, BRYAN R

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 11/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/779,183	Applicant(s) ELLINGTON
Examiner Bryan Fischmann	Art Unit 3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Oct 4, 2002

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 19 is/are allowed.

6) Claim(s) 1, 2, 4-13, 15-18, and 20 is/are rejected.

7) Claim(s) 3 and 14 is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on Feb 8, 2001 is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on Feb 27, 2002 is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

4) Interview Summary (PTO-413) Paper No(s). _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

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Acknowledgments

1. The Amendment and translation of priority Document (paper 10) filed 10-04-2002 has been entered.

Claim Objections

2. Claims 1-18 and 20 are objected to because of the following:

A) Claim 1 recites "...an elongated slide board...and an elongated step board...attached to an upper surface of the slide board...via a connecting member...the connecting member retains the slide board and step board in a fixed...and spaced relationship...".

Note that Line 25 of sheet 5 to line 1 of sheet 6, as amended by paper 8 recites "The four tubular members 4 retain the slide board and step board 3 in affixed parallel relationship in cooperation with the threaded bolts 6 and nuts 7".

From this, the "connecting member" recited in claim 1 above is best understood to correlate to reference number 4, since this is the only "connecting member" that also allows the boards to remain in a "fixed relationship". However reference number 4 does not "attach" the two boards. Note that the above specification teaches that reference numbers 4, 6 and 7 are all required to "attach" the step board to the slide board in a "spaced" and "fixed" relationship.

Due to this, the recitation of "a connecting member" which implies a single component attaches the two boards together in a "spaced fixed relationship", when three "members" are actually required, is objected to.

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A recommended alternative term to "connecting member" is "connecting assembly".

For purposes of examination, either any member of an "assembly" of parts used to attach a step board to a slide board, or an entire assembly will be assumed to meet the above recited limitation.

See also claims 2, 6-8, 11, 12 and 15-17 and 20 for a recitation of "connecting member".

B) Claim 1 is considered somewhat redundant in that it states the step board and slide board are maintained in fixed, substantially parallel and spaced relationship at two places by a connecting member in the same claim with only slightly modified wording in each "place".

C) Claim 6 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. Note that the recitation of "wherein the connecting member retains the slide board and step board in fixed and parallel relationship" is also recited in the last lines of claim 1, upon which claim 6 is dependant.

Also note that the above claim 6 recitation is objected to, as previously noted on the last Office Action in regards to a similar recitation in claim 1, that the connecting member retains the board in a fixed and parallel relationship only in the immediate vicinity of the connecting member, as opposed to the entire length of the board, as claim 6 implies.

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Further note that the word “substantially” should appear in the above claim 6 recitation before the word “parallel” to be consistent with similar wording used in other claims and the fact that the boards, even in the immediate vicinity of the connecting members are not believed to be “exactly” parallel, when in use, in that the weight of the user will deflect the ends of the boards which will cause the boards in the immediate vicinity of the connecting member to have a slope that will be at least slightly non-parallel to horizontal and to each other.

Note also that Instant Figure 3 shows the boards to be slightly “non-parallel”, even in the vicinity of the connecting member.

The objection to claim 6 in that it fails to further limit the parent claim is most easily resolved by cancellation of the claim. In the event Applicant cancels claim 6, the other objections made to the wording in claim 6 above would then be moot.

D) Claims 9 recites the term “connecting mechanism”. This term is understood to correspond to connecting components 4, 6 and 7.

The use of the term “mechanism” in this context is objected to, as the term “mechanism” is defined by Webster’s Collegiate Dictionary 10th Edition, “a mechanical operation or action”. This definition, as well as the generally accepted meaning of the term “mechanism” implies connected parts that are capable of undergoing relative movement.

Since reference numbers 4, 6 and 7 are “static” or non-moving parts, the term “connecting mechanism” in describing these parts is objected to.

A recommended alternative term is “connecting assembly”, or similar.

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Note that though Applicant may be his own lexicographer, that a term may not be used in a context contrary to it's normal or accepted meaning.

See also claims 9, 10, 13, 18 and 19 for a recitation of "connecting mechanism".

E) Claim 18 recites "...to substantially prohibit relative pivoting between the boards during use of the snowboard in the immediate vicinity of the connecting mechanism...". Webster's Collegiate Dictionary, 10th Edition, defines "pivot" as: "a shaft or pin on which something turns". It is noted that there is no shaft or pin that the boards "pivot" on. Since there is no "shaft or pin" on which each board "pivots", the term "pivot" is objected to in this context.

A recommended alternative term to "relative pivoting" is "relative movement", or similar.

See also claim 17 for a similar recitation utilizing the word "pivot".

F) To be consistent with other claim recitations, and to be literally correct, the claim 20 recitation "wherein the connecting member retains the slide board and step board in a fixed, substantially parallel and spaced relationship during use of the snowboard", should also recite that this relationship occurs only in the "immediate vicinity of the connecting member", since, as previously noted, the ends of the snowboard will deflect to a substantially non-parallel position during use.

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Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11, 12 and 20 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant regards as his invention.

A) Claim 11 recites the limitation "connecting member". There is insufficient antecedent basis for this limitation in the claim.

See also claims 12 and 20 for similar antecedent basis problems with the term "connecting member".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 6, 7, 9-11, 13 and 15-18 is rejected under 35 U.S.C. 102(b) as being anticipated by Dodge, US Patent 5,580,077.

Dodge teaches a snowboard for sliding over snow, comprising:

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an elongated slide board (10) having a slide surface on a lower surface thereof (Figure 2); and

an elongated step board (34) defining a deck on an upper surface thereof (Figure 2) and attached to an upper surface of the slide board in a substantially parallel and spaced relationship via a connecting member (54 - see also the claim objection portion of this Office Action regarding the term "connecting member" - further, see additional comments below), made of substantially non-compressible material (note that the cross-hatching of 54 indicates this part is made of metal - see Section 608 of the MPEP); and

the connecting member retains the slide board and step board in a fixed, substantially parallel and spaced relationship in the immediate vicinity of the connecting member during use of the snowboard (see comments below).

Regarding the claim 1 recitations "an elongate step board...attached to an upper surface of the slide board in a substantially parallel and spaced relationship via a connecting member" and "the connecting member retains the slide board and the step board in a fixed, substantially parallel and spaced relationship in the immediate vicinity of the connecting member", and similar recitations in claims 9 and 18, note that reference number 40 passes through spacer 54. Reference number 40 is a screw that is affixed to the step board of Dodge and is also threaded into the slide board of Dodge. Due to this, in order for the step board of Dodge to "pivot" about the slide board, presumably about the base of inverted mushroom shaped spacer 54, the screw 40 would also have to "rotate" about an axis perpendicular to the plane of the paper illustrating

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Figure 5 of Dodge, where the spacer 54 meets washer 44. This is not possible since the screw 44 is securely threaded into the slide board of Dodge, as also shown on Figure 5. See also the claim objection portion of this Office Action regarding the terms “connecting member” and “connecting mechanism”.

Regarding claims 2 and 13, see Figure 1 of Dodge, particularly noting that the step board is not as long as the slide board.

Regarding claim 6, see the claim objection portion of this Office Action for claim 6.

Regarding claims 7, 10 and 11, note the cross-hatching for reference numbers 44 and 54 on Figure 5 of Dodge corresponds to metal. See Section 608 of the MPEP, where cross-hatching for Patent Applications and Patents is defined. See also the claim objection portion of this Office Action regarding the terms “connecting member” and “connecting mechanism”.

Regarding claim 15, since it has already been established that reference numbers 44 and 54, which maintain the step and slide boards in spaced relationship are made of metal, since metal does not appreciably compress under low loads, the connecting member will be maintained in a “substantially fixed height” during use of the snowboard.

Regarding claim 16, see Figures 1 and 5.

Regarding claim 17, see the “comments” regarding similar recitations above in claims 1 and 18. See also the claim objection portion of this Office Action regarding the term “pivot”.

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Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dodge, US Patent 5,580,077, in view of Tinkler, US Patent 5,544,919.

The snowboard of Dodge fails to teach an engagement portion in the nose part.

However, Tinkler teaches an engagement portion (Figure 1) in the nose of a sportsboard.

Although Tinkler illustrates the engagement portion on a skateboard, Tinkler recites on lines 20 and 21 of column 5 "...these concepts are equally applicable with other sportsboards, such as snowboards...". An engagement portion on the nose of a snowboard is advantageous in that it allows a user's foot to remain engaged with the board, while also allowing the user's foot to be located at a part of the board where there is large "leverage" on the board, which facilitates accomplishing stunts and maneuvering.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize an engagement portion on the nose portion of the snowboard of Dodge, as taught by Tinkler.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dodge, US Patent 5,580,077, in view of Laughlin, et al, US Patent 5,915,721.

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The snowboard of Dodge fails to teach a binding.

However, snowboard bindings are well known in the art. Laughlin provides a teaching of a snowboard binding. Bindings allow the boots of a snowboarder to be secured to the snowboard, so that the snowboard and the snowboarder do not become separated.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a binding on the stepboard of the snowboard of Dodge, as taught by Laughlin.

10. Claims 8 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Dodge, US Patent 5,580,077.

Dodge does not explicitly teach or a “plurality of tubular connecting members” that are “tubular” in shape (claim 8) made of a metallic material (claim 7, from which claim 8 depends) and a “connecting member” that is “tubular” in shape (claim 12) and that is “relatively rigid” (claim 10, from which claim 12 depends).

However, the “connecting members” have already been defined in claims 7 and 10 to comprise reference numbers 44 and 54 and may be expanded to include reference number 40, which is a screw. Screws are tubular in shape. Figure 1 of Dodge teaches there is a “plurality” of reference numbers 40. Dodge fails to explicitly state that reference number 40, which is a screw, is made of a “metallic material”, or is “relatively rigid”.

However, the Examiner takes Official Notice that screws are commonly made of metal and that metal is “relatively rigid”. Any hardware store will provide a ready teaching of this.

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Since screws are fasteners and fasteners are generally utilized to provide a clamping force, it is advantageous to make the fastener out of metal, as opposed to, say, plastic, as metal will allow a greater clamping force to be applied, without failure of the fastener, than a plastic fastener, due to the greater strength of metal.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the screw fastener, reference number 40 of Dodge, out of metal.

See also the claim objection portion of this Office Action regarding the term "connecting member".

Allowable Subject Matter

11. Claim 19 is allowed.
12. Claims 3 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and to overcome any applicable claim objections.
13. Claim 20 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, and claim objection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Response to Applicant's Remarks (paper 10) and Examiner's Comments

14. The amendment (paper 10) has resolved the 112 2nd rejections made on the last Office Action.

15. The translation submitted as a part of paper 10 has overcome the 102 rejection of all claims as being anticipated by Barbieri. The publication date of Barbieri was before the filing date of the Instant Application but after the claimed foreign priority date of the Instant Application.

16. The rejection of claim 18 as being anticipated by Dodge made on the last Office Action (paper 9) is repeated in this Office Action. Applicant's arguments in paper 10 against this rejection and the Examiner's response follows.

Applicant's argument against rejection of claim 18 - On sheet 3 of paper 10 Applicant recites "...in view of the above amendments to claims 1 and 17, applicant respectfully submits that the snowboard of claim 18 is clearly patentably distinct over Dodge's snowboard, based on the foregoing argument regarding the deficiency of Barbieri relative to claim 1, which is not overcome by any additional teaching of Dodge, and because Dodge's supporting assembly is directly contrary to the feature of the invention as now set forth in claim 17...Particularly Dodge's connecting mechanism shown in his Fig. 5 (including bolt 40, resilient pad 42, stand off plate 44 and mushroom spaced spacer) permits and facilitates pivoting movement of the boot mounting plate 28 relative to the guiding slide 10 (i.e., about the curved lower surface of the spacer 54)".

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Examiner's Response:

(1) Since claim 18 is an independent claim rejected under 35 USC 102 as being anticipated by Dodge, it is unclear how amendments to claims 1 and 17 or the teachings of Barbieri are germane to the 102 rejection of claim 18 as being anticipated by Dodge.

(2) Regarding the "connecting mechanism" of Dodge shown in Figure 5, the Examiner respectfully disagrees with the Applicant's assertion that the connecting mechanism "permits and facilitates pivoting movement of the boot mounting plate 28 relative to the guiding slide 10". This is due to the fact although the spacer 54 in Figure 5 is in the shape of an "inverted mushroom", which, at first glance might appear to allow "pivotal movement", it should be further noted that reference number 40 passes through spacer 54. Reference number 40 is a screw that is affixed to the step board of Dodge and is also threaded into the slide board of Dodge. Due to this, in order for the step board of Dodge to "pivot" about the slide board, presumably about the base of inverted mushroom shaped spacer 54, the screw 40 would also have to "pivotally move" about an axis perpendicular to the plane of the paper illustrating Figure 5 of Dodge, where the spacer 54 meets the washer 44. This is not possible, since the screw 44 is securely threaded into the slide board of Dodge, as also shown on Figure 5.

17. Upon further review, the Examiner has realized that many other claims are rejectable under 35 USC as being anticipated by Dodge, or under 35 USC 103 utilizing a secondary reference. Additionally, many new claim objections and a couple of new 35 USC 112 2nd paragraph rejections are set forth. Accordingly, this action is made non-final. The Examiner

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regrets that these additional objections and rejections were overlooked previously during prosecution of the Instant Application.

Conclusion

18. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 7:30 to 4:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Bryan Fischmann 11-9-2
BRYAN FISCHMANN
PATENT EXAMINER